

ESTTA Tracking number: **ESTTA906221**Filing date: **06/28/2018**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92068484
Party	Plaintiff Polyfusion Electronics, Inc.
Correspondence Address	RONALD J FOLKMAN POLYFUSION ELECTRONICS INC 30 WARD ROAD LANCASTER, NY 14086 UNITED STATES Email: rfolkman@polyfusion.us, lfolkman@polyfusion.us, jpsoloman@gmail.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Ronald J. Folkman
Filer's email	rfolkman@polyfusion.us, lfolkman@polyfusion.us, jpsoloman@gmail.com
Signature	/Ronald J. Folkman/
Date	06/28/2018
Attachments	755MarkII.POS.01.2017.pdf(669137 bytes) 2018-01-23 Letter-1.pdf(160742 bytes) Fake Poly Using Steve P W_Out Permission.pdf(1040337 bytes) Knobcon Swag Intent_.pdf(68982 bytes) Danny Erickson Polyfusion LLC.pdf(546186 bytes) Fake Polyfusion False Advertising II.pdf(805687 bytes) Fake Polyfusion False Advertising.pdf(257353 bytes) Fake Polyfusion Reporting Me 2.pdf(143051 bytes) Fake Polyfusion Reporting Me 3.pdf(336928 bytes) Fake Polyfusion Reporting Me.pdf(42751 bytes) Fake Polyfusion Tshirt.pdf(435662 bytes) Fake Polyfusion Website.pdf(306635 bytes) Logan Erickson Mike Olson.pdf(1902552 bytes) Ordinary Business Example.pdf(181203 bytes) Porcaro Advertising Back.pdf(1279750 bytes) Porcaro Advertising Front.pdf(4289410 bytes) Radke And Erickson Prior Knowledge Of Polyfusion.pdf(2474296 bytes) Steve Porcaro Still Wearing Our New Polyfusion Tee.pdf(3011478 bytes) Fake Polyfusion Advertising Front.pdf(4274866 bytes) Fake Polyfusion Advertising Back.pdf(4537520 bytes) Cancellation.pdf(197431 bytes)

755 MK II

FREQUENCY SHIFTING FEEDBACK CONTROLLER

- *Low Noise Circuitry*
- *Phase Accurate, Not a Filter*
- *Continuous Shifting,
Zero Response Time*
- *Proven, Patented,
and Warranted*

STOP THAT SQUEALING

Simply put, feedback is caused when amplified sound from a speaker gets back into a microphone and is then once again amplified. A few trips through the "loop" and the entire system is howling.

Enter the Polyfusion 755 Mk II. By constantly shifting the audio frequency, it can prevent the re-processed sound from building upon itself, because each time it travels around the "loop", it is at a slightly different frequency. This shifting of frequency allows the system to be operated at much higher gain levels without electro-acoustic feedback.

The Polyfusion 755 Mk II actually *prevents the cause* of feedback, rather than just *treating the symptom*. Since it's not a filter, it won't produce "holes" in the audio spectrum or color the sound with phase distortion.

Expect a lot and get a lot! Up to quadruple the useable power. Specified by consultants, contractors, and architects for the most difficult feedback problems, the Polyfusion 755 Mk II will give you a distinct advantage over the competition.

Polyfusion Electronics, Inc.

30 Ward Road Lancaster, New York 14086 Tel: (716) 681-3040 Fax: (716) 681.2763

www.polyfusion.us sales@polyfusion.us

705MarkII.POS.01.2017

Specifications: Model 755 Mk II Frequency Shifting Feedback Controller

Frequency Shift 1.5, 2.0, 3.0, 4.0, 5.0, 6.0 Hz

Shift Direction Up or Down (Switch Selectable)

Inputs

Line Level Up to +20dBm
Balanced XLR Connector, Z=600 Ohms or 10 kOhms (selectable)
(transformerless)
Unbalanced Phone Jack, Z=50 kOhms

Outputs

Balanced Z=50 Ohms, XLR Connector
(transformerless)
Unbalanced Z=25 Ohms, Phone Jack

Parameter

	Bypass Mode	Operate (Shift) Mode
Frequency Response	+3dB 16Hz to 16kHz	+3dB 24Hz to 16kHz
Max Signal Capacity	+20dBm	+20dBm up to 6kHz
Noise level	-72 +2dBm	-70+2dBm
Signal to Noise Ratio	92dB Typical	90dB Typical

Controls/Switches

Power On-Off
Shift Direction Up-Down
Shift Amount 1.5-6.0Hz (6 Position Rotary)
Status Operate/Bypass
Voltage Selector 115-230 Volt (Rear Panel Slide Switch)

Indicators

Power Green LED
Shift Rate Yellow LED (Pulsates at Shift Frequency)
Bypass Red LED

Power Requirements

Voltage 100 to 230 Volts AC (rear panel voltage selector)
Frequency 50 to 60Hz
Current 200 mA. (Max.)
Protection 250 mA. Fuse (User Accessible)
Connection Molded 3-Wire Cordset (Unplugs from Chassis)

Physical

Rack Mount
Size 1 ¾ x 8 ½ x 19 Inches (Overall)
Weight 4 ½ Pounds (Net)
Operating Temperature 0° to +70°C (32° to 158°F)



30 Ward Road Tel: (716) 681-3040
Lancaster, NY 14086 Fax: (716) 681.2763
sales@polyfusion.us



Email: aarono@andruslaw.com

January 23, 2018

VIA EMAIL

Patrice N. Perkins
Creative Genius Law
5113 S. Harper Avenue, Suite 2C
Chicago, IL 60609

Re: POLYFUSION Mark
Andrus Ref. 6539-00002

Dear Ms. Perkins:

Andrus Intellectual Property Law represents Polyfusion Synthesizers, LLC and Scott Radke in intellectual property matters. Your letter of January 18, 2018 was referred to me. Please direct all future correspondence to our attention.

Your letter notes that “[Polyfusion Electronics, Inc.] has designed, manufactured and sold music synthesizers in the United States and international markets, under the POLYFUSION mark since October 28, 1975. Additionally, Polyfusion Electronics, Inc. previously owned the federal trademark, registered on May 1, 1979 (Registration #1117225).” Your letter, however, fails to mention that your client abandoned U.S. Trademark Registration 1,117,225 as of August 9, 2000 according to USPTO records. Your letter also fails to mention that the apparent reason for abandonment of the Registration is that your client abandoned use of the POLYFUSION name for more than three consecutive years.

We note with interest the U.S. Trademark Application No. 87/513,037 filed on June 30, 2017 by “Polyfusion” a New York Corporation of Lancaster New York claiming a first use in commerce of March 7, 1977. The USPTO noted in a suspension letter of July 14, 2017 that this application is suspended in view of my client’s trademark application Serial No. 87/416,699 which was filed on April 19, 2017 and which published for opposition on October 3, 2017. Your client took no action during the opposition period.

There is no evidence of your client’s use of the mark or its intent to resume use of the mark for electronic music synthesizers prior to the 87/513,037 application. Later use of a trademark cannot retroactively cure a prior abandonment. To the extent your client is relying on “goodwill” from use prior to 2000, such residual goodwill is an insufficient defense to trademark abandonment. See *Hornby v. TJX*, 87 USPQ2d 1421 (2d Cir 1989).

Accordingly, my client is well within their rights to adopt the abandoned POLYFUSION mark. My client’s trademark application Serial No. 87/416,699 filed on April 19, 2017 establishes a seniority right after the abandonment by your client.

With all of this said, if you have evidence of continuous use of the POLYFUSION mark from 2000 to 2017, we would appreciate to opportunity to review that

January 23, 2018

Page - 2 -

evidence and avoid unnecessary legal expenses. In the absence of such evidence, however, we can only assume that such evidence does not exist and that the abandonment evidenced by U.S. Trademark Registration 1,117,225 as of August 9, 2000 is accurate.

Finally, in light of the abandonment, your claims that the POLYFUSION mark is somehow famous, and that any alleged counterfeiting or confusion occurred under state laws appears far fetched.

Accordingly, Polyfusion Synthesizers, LLC and Mr. Radke will not acquiesce to the demands of your January 18, 2018 letter, but remain willing to amicably discuss resolution of your concerns.

Yours truly,



Aaron T. Olejniczak

ATO/mgm

Subject: Fwd: NAMM 2018 ?

From: [REDACTED]@mac.com

To: [REDACTED]@yahoo.com

Date: Monday, April 30, 2018, 1:58:59 PM EDT

Is this what you were looking for? sp

Begin forwarded message:

From: Polyfusion Synthesizers <polyfusionsynthesizers@gmail.com>

Subject: Re: NAMM 2018 ?

Date: September 27, 2017 at 8:43:29 PM PDT

To: Steve Porcaro [REDACTED]@mac.com>

Cc: Scott Adair <scott@londonco.com>

Dear Mr. Porcaro,

Thanks for reaching out to us.... we are really glad you did! This is a rather interesting (and somewhat embarrassing) first contact with someone who we hold in such high regard.

We are a new company and are preparing to debut our modular synthesizer at NAMM this winter, so we decided to do a soft announcement postcard at KnobCon- (please see attached PDF's of the postcard). For some reason, the printers included a handful of test printings of an early sticker concept we had which involved that really cool photo of you playing a Polyfusion Modular system- (an idea we shelved because we couldn't figure out how to get permission to use it.) Needless to say, some stickers made their way into a handful of "swag bags" and we sincerely apologize for that. We never meant to imply in any way that you would be at NAMM 2018 ;)

Sincerely,

Scott and Logan

On Tue, Sep 26, 2017 at 8:39 PM, Steve Porcaro [REDACTED]@mac.com> wrote:

Hey Guys

Just saw a card that said NAMM 2018 on one side, and the other side had nothing but my picture. What's up? For starters, I haven't made any plans to be at NAMM next year. Did you want to ask me something? Regards, Steve Porcaro

nam2m2





Subject: ^_Knobcon^_ Exhibitor Update

From: mail@knobcon.com

To: [REDACTED]

Date: Wednesday, August 23, 2017, 3:44:11 AM EDT

Firstly, we'd like to say thanks for exhibiting at this year's event. Each year we are humbled by the growing number of people who commit to bring gear to this show of ours. We know there are lots of synth events happening these days. Your choice to make Knobcon part of your show schedule is something we, and our attendees are very appreciative of.

As we get closer to the event, we've got a few reminders as well as a few additional opportunities. As always if you have any questions, we're happy to help.

Introducing a new product at Knobcon? Let us know!

We are looking to put together a section of the knobcon home page listing all the new gear that will be at the event. We will also use these items in social media posts to promote the show and drive attendance. If you have items that you'd like to see featured, please get in touch by replying to this email.

Call for Demo Derby Instruments

Sorry for the late notice on this one, but we've been working with TASCAM over the past few weeks to put together a new Demo Derby concept. TASCAM has agreed to bring ten DP-006 Six Track Pocket Studios for use at the stations. Attendees will be able to do multitrack recording using the various derby instruments and be qualified for the drawing. Three winners will be chosen to win TASCAM gear!

If you would like to provide an instrument or set of instruments for the TASCAM Demo Derby, please send us an email. There is no cost to participate. Complete details are forthcoming.

Door Prizes and Giveaways

If you have an item you'd like to donate as a door prize, let us know. We utilize donated prizes to help drive admission to the show, and to the annual Knobcon Banquet as well. We post these items on the website and in boosted social media posts along with your companies' name/info also.

Swag Bag Inserts

If you want to have items inserted into the 500 Swag Bags, the deadline for the receipt of those items is September 1. Both Gold and Silver sponsors can have an item inserted free as part of their sponsorship, for others it's \$40.

Thanks and see you soon!

Home > U.S. > Wisconsin > Milwaukee

POLYFUSION SYNTHESIZERS, LLC

Wisconsin Department Of Financial Institutions Business Registration · Updated 7/14/2017

Write Review


Upgrade

Claim

Szott M-59 Dodge® - Browse Our Inventory

Szott M-59 Dodge

Select Models Up To \$13,428 Off MSRP. Visit Szott M-59 Today & Save.



WEBSITE

DIRECTIONS

[Polyfusion Synthesizers, LLC](#) is a Wisconsin Domestic Limited-Liability Company filed on July 10, 2017 . The company's filing status is listed as Organized and its File Number is [P070388](#).

The Registered Agent on file for this company is Daniel Logan Erickson-Cudworth and is located at 28 N. Humboldt Blvd., Milwaukee, WI 53212.

Company Information

Company Name: [POLYFUSION SYNTHESIZERS, LLC](#)
File Number: [P070388](#)
Filing State: Wisconsin (WI)
Filing Status: Organized
Filing Date: July 10, 2017
Company Age: 2 Months
Registered Agent:  Daniel Logan Erickson-Cudworth
28 N. Humboldt Blvd.
Milwaukee, WI 53212

Court Records

3 Sources Found

Records Updated Daily!

I **WILL NOT** use this information to stalk anyone.
If I see someone I know, I **WILL NOT** use this information for blackmail.
I **WILL NOT** harass people whose criminal records appear on this site.



Polyfusion Synthesizers

@polyfusionsynthesizers

Home

Posts

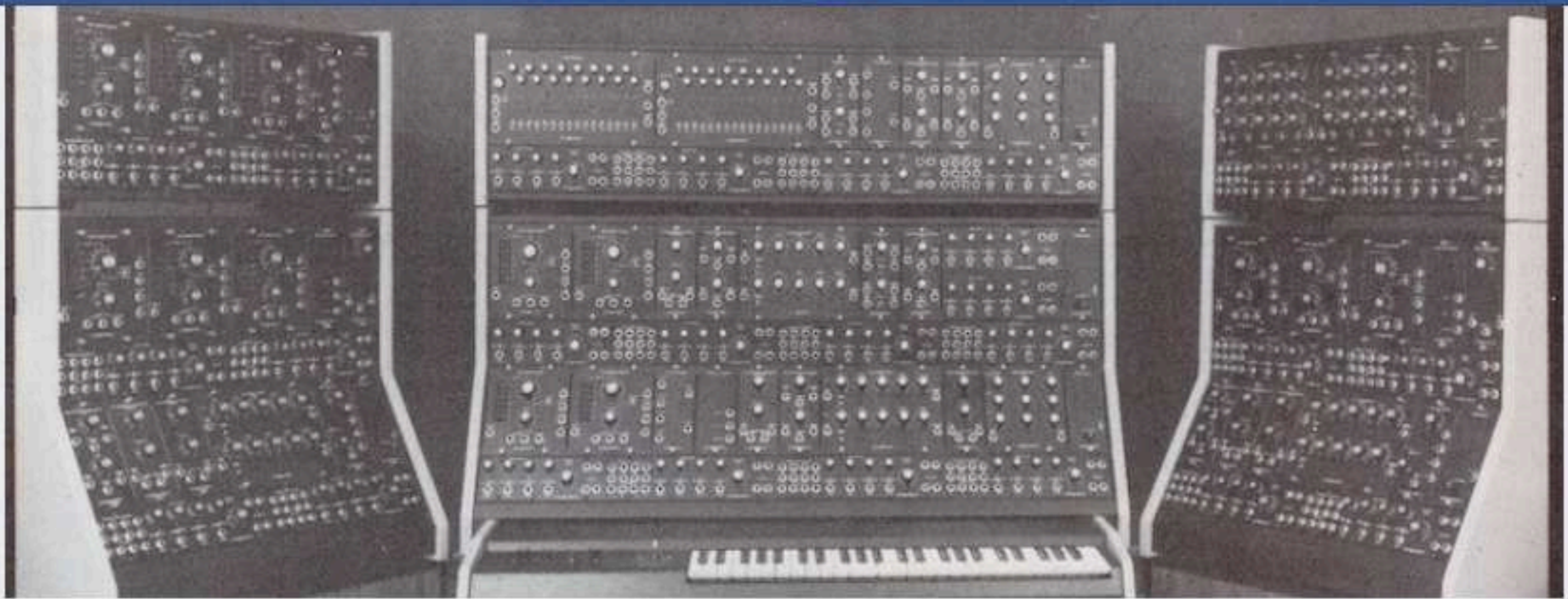
Reviews

Photos

About

Community

Create a Page



Like

Follow

Share



Send Message

Posts



Polyfusion Synthesizers updated their cover photo.

May 9 · 🌐



Like

Comment

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Polyfusion Synthesizers

May 9 · 🌐

Electronics

4.0 ★★★★★

Search for posts on this Page



Invite friends to like this Page



2 people like this and 2 people follow this

About

See All



Send Message



PolyfusionSynthesizers.com



Electronics

Visitor Posts



Kenneth Samuel Cromie

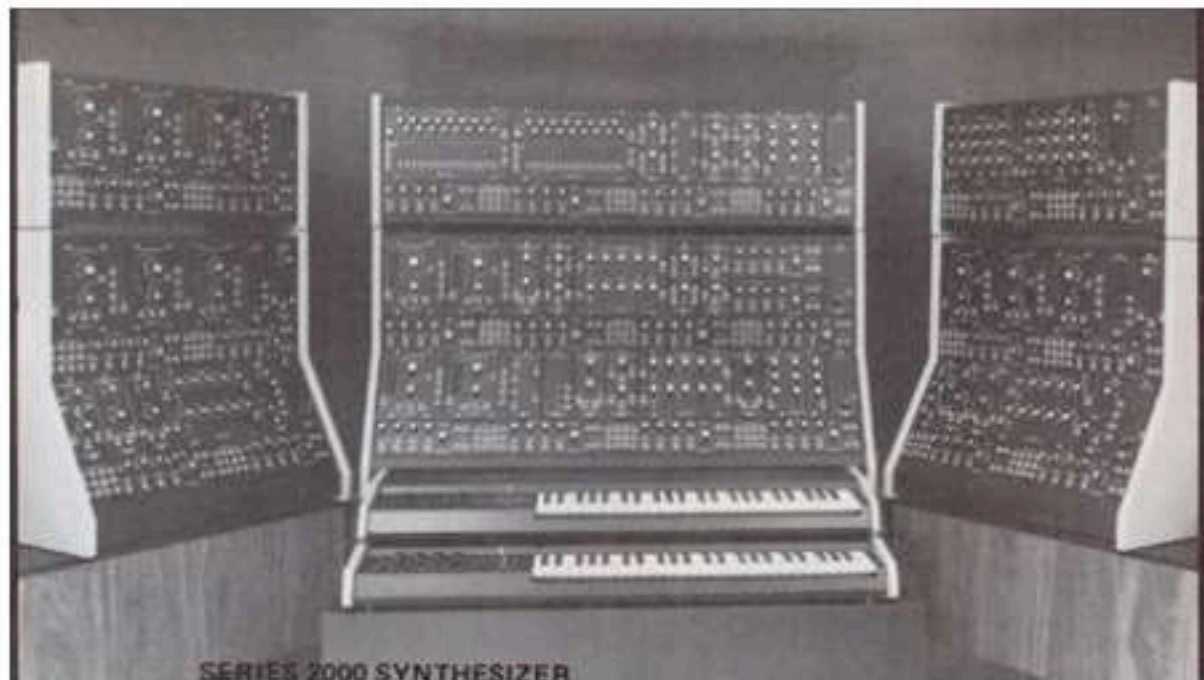
May 9 at 4:41pm · 🌐

Posts



Polyfusion Synthesizers updated their cover photo.

May 9 · 🌐



Like



Comment



Share



Polyfusion Synthesizers

May 9 · 🌐

Coming soon...Again.



Like



Comment



Share



1

Chronological ▾



Kenneth Samuel Cromie I just had my hand on one.

Like · Reply · 🌐 1 · May 9 at 5:01pm



Write a comment...



See All

We removed content you posted

We removed the following content from Facebook because we received a report alleging that it infringes or violates the rights of a third party, and/or because we have reason to believe that you're not authorized to represent the subject matter of the content.

**Polyfusion**[Continue](#)

Learn More

Learn More About Your Account

Your account was disabled for violating our [Terms of Use](#). Possible reasons include but aren't limited to:

- We received a report from a person or company that the content you posted infringes or otherwise violates their legal rights (example: copyright, trademark rights)
- Repeated behavior infringing or violating a third party's legal rights
- Impersonation of a company, organization or other entity that we have reason to believe you aren't authorized to represent
- Posting content that otherwise violates our Terms of Use

Please note that once an account is disabled, you will no longer be able to log into it and others will not be able to view it. To learn more, please review our Terms of Use and [Community Guidelines](#).

Contact the Complaining Party

If you believe that this content should not have been removed from Facebook, you can contact the complaining party directly to resolve your issue:

Report #: 1138084836333858

Rights Owner: Polyfusion Synthesizers, LLC

Email: polyfusionsynthesizers@gmail.com

If an agreement is reached to restore the reported content, please have the complaining party email us with their consent and include the report number. Please note that the complaining party is not required to respond to your request.

[Continue](#)

polyfusionTM synthesizers

← BACK TO PRODUCTS



POLYFUSION T-SHIRT

\$25.00

Polyfusion T-Shirt

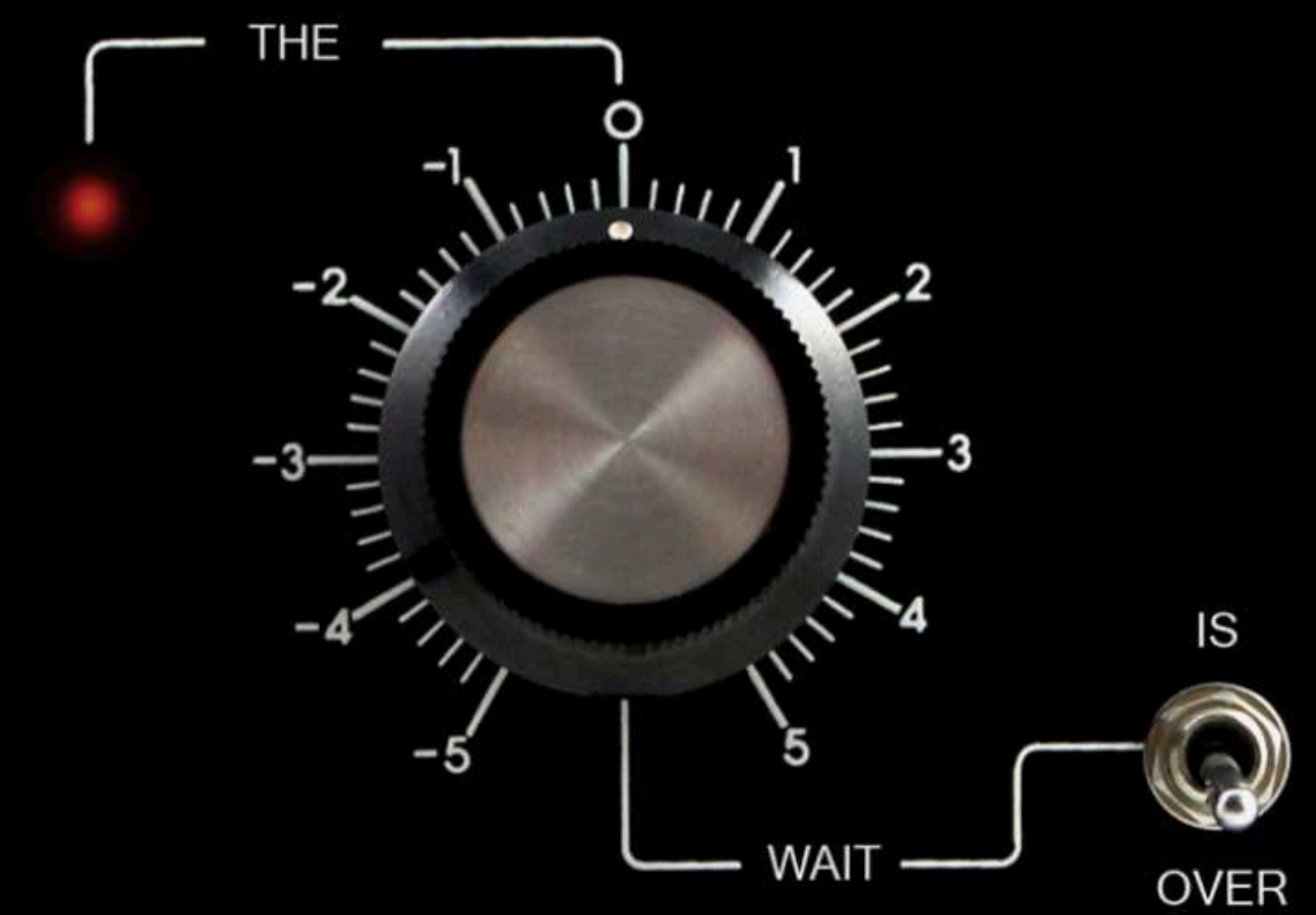
Size:

Select Size

Quantity:

1

ADD TO CART



polyfusionTM
synthesizers

It is my understanding that there were only two **Polyfusions** sold in Minnesota. The one sold to Herb, mentioned above, and another one which was sold to **Steve Solum**. I've known Steve for decades and I knew he had the Polyfusion in storage and was hanging onto it. I made various inquiries over the years to see if he'd be willing to sell it. Eventually, this became an annual ritual. I'd send him an email asking if he had given any more thought to selling the instrument and he'd say he still wanted to keep it. In 2017 I made my usual inquiry with Steve, and this time he finally relented. We agreed on a price, I picked it up and brought it directly over to **Logan Erickson** to have him start in on a restoration, which it needed seeing as it hadn't been powered-up for many years. I can't believe my good fortune to have this opportunity once again to own such a rare and interesting instrument.



Picking up the Polyfusion from Steve.



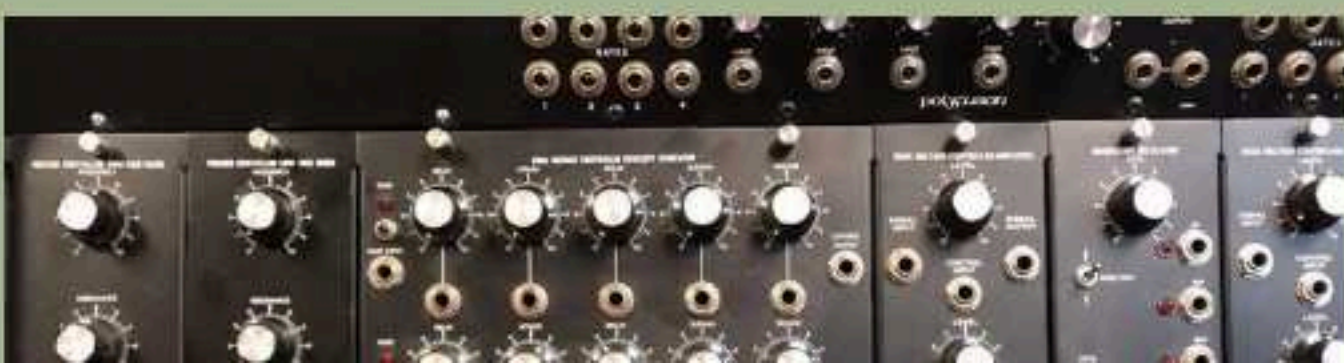
Logan inspecting one of modules.



Modules on the shelf during restoration.



The keyboard controls.





REPLY



Don Nowakowski

09/03/2016 AT 3:25 PM

Hi Chris,

I have a Polyfusion Soundaround Quad Panner.

I know these are rare.The internal oscillator that pans is not working.Everything else does.Including the joystick.I'm trying to get it repaired.But the guy can't find anyone with any specs on this unit anywhere.Can you help me at all with this?.I will be more than happy to pay you for them. Thank you for your time!

Don

REPLY



★ chris

09/19/2016 AT 11:34 AM

Sorry Don, no, I have no info on this.

REPLY



Don Nowakowski

12/05/2016 AT 7:02 PM

Hi Chris,thank you for getting back to me on this.I'm having no luck on ANY info on this product.Thank you again!

REPLY



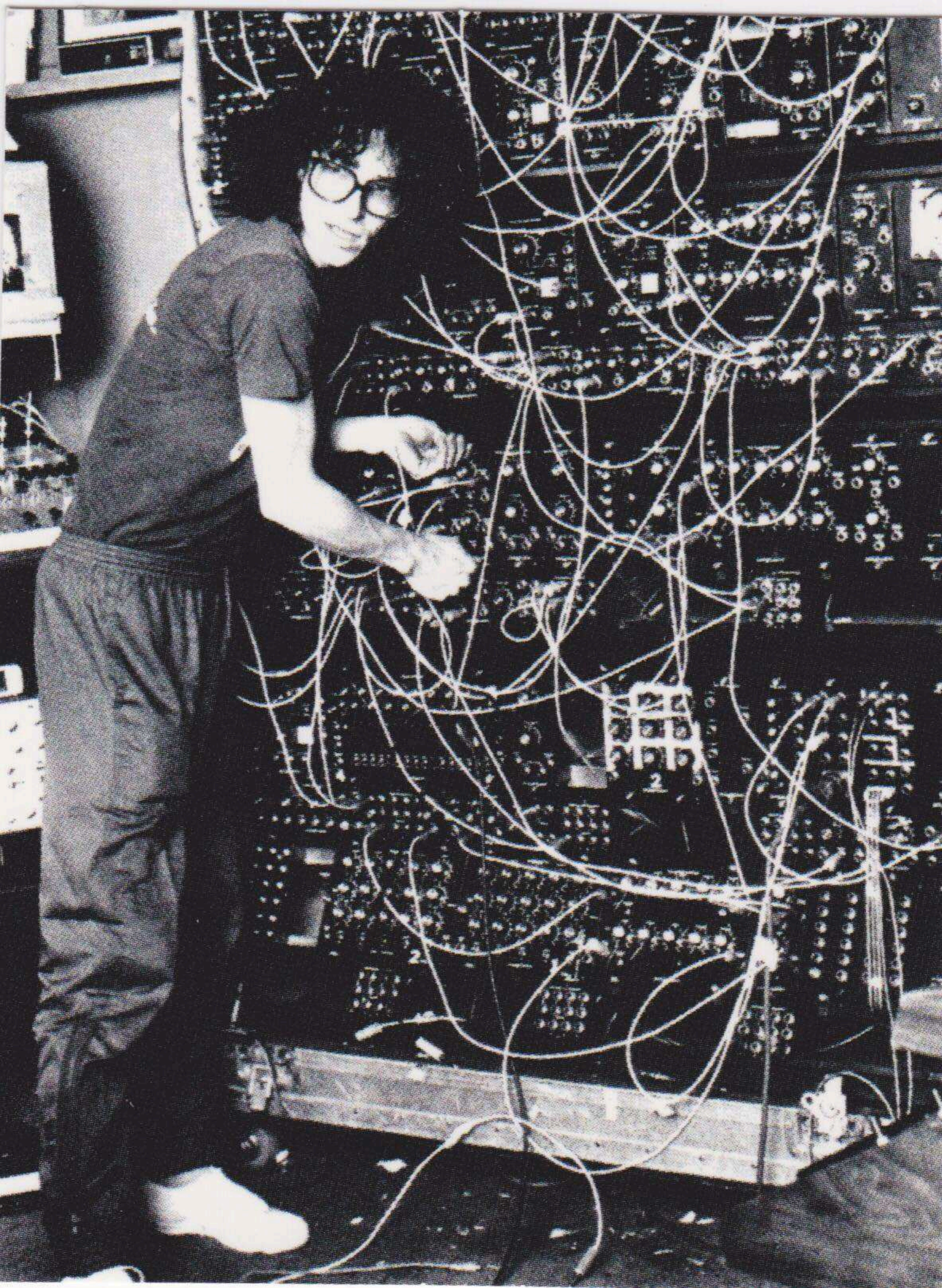
Ron Folkman

04/11/2017 AT 4:04 PM

Hi Chris, Saw this and laughed. Have you considered sending it back here to the factory? I designed this and we built them in the early 80's. The LFO stopping is fairly common. Get it back to me and I will fix it for you under warranty, after all it's only 37 years old. Best Regards, Ron Folkman, Polyfusion Electronics, 30 Ward Road, Lancaster New York, 14086.

REPLY

nam 2018





Damir-Kristijan Rogina · Polyfusion
Modular Systems - Series 2000

April 3, 2017 · 📷

another KING !

👍 Like

💬 Comment

👍❤️ Jareth Lackey and 23 others



Stefaan Van Parys ex David Leigh Morley?

Like · Reply · 1y



Stefaan Van Parys And ex Hans Zimmer!?

Like · Reply · 1y



Logan Erickson Scott, isn't this your old system that you sold to Hans?

Like · 1y



Damir-Kristijan Rogina no

Like · 1y



👤 **Scott Radke** It's similar in size & compliment....but Hans still has mine.

Like · 1y



👤 **Scott Radke** Or I mean....still has the one I sold to him 😊

Like · 1y



Mike Olson No blind panels.

Like · Reply · 1y



Mike Olson Logan: Note that it looks like this has three power supply modules. One on each row. Perhaps a harbinger of future issue with mine. May have to add a second power supply on the upper row.

Like · Reply · 1y · Edited



Logan Erickson Yeah. No biggy. Simple simple



Write a comment...



Photos

In Timeline Photos



Jürgen Josef Mader

March 21 · 🌐

Aftershow with STEVE PORCARO - amazing TOTO 40th Anniversary Concert in Offenbach/Germany — with [Steve Porcaro](#).



Like



Comment



Share

👍❤️😄 92



Joseph Williams Steve is great its only human nature.

Like · Reply · 12w



2



Kirk Sullivan Immensely enjoyed your work on the series Justified!

Like · Reply · 6w



Virginia Charlie Can't wait to see you in Grand Rapids!! Nibble time.

Like · Reply · 2w



Write a comment...



2K

1K

500

250

125

LOW

-3

-4

-5

SPAN

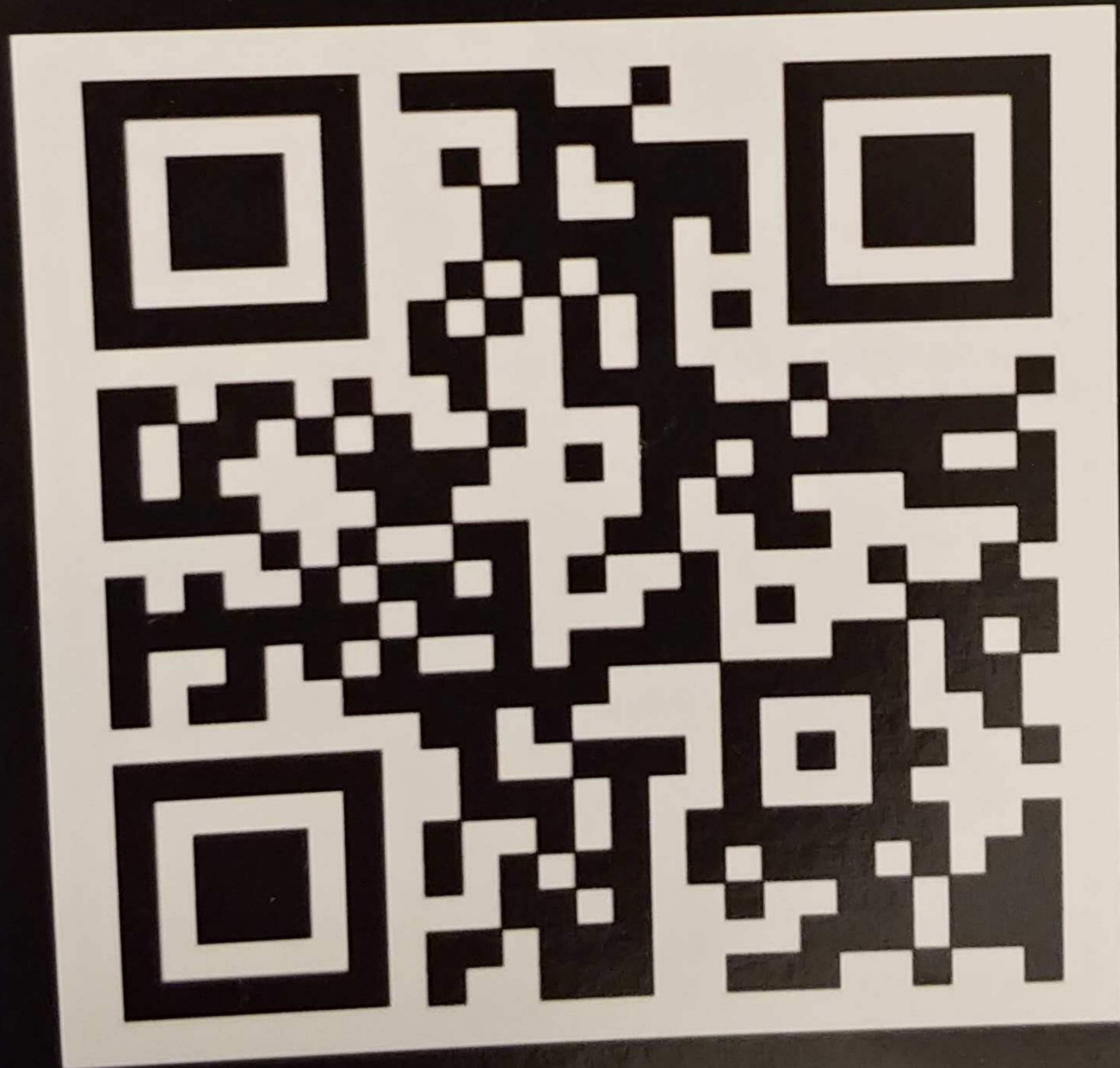
PULSE WIDTH



CONTROL INPUTS
FREQUENCY

POLYFOUR

namm 2018



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

Petition For Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Polyfusion Electronics, Inc.		
Entity	Corporation	Citizenship	New York
Address	30 Ward Rd Lancaster, NY 14806 UNITED STATES		

Correspondence Information	Ron Folkman 30 Ward Rd Lancaster, NY 14806 UNITED STATES Phone: (716) 681-3040 rfolkman@polyfusion.us
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Registration Subject to Cancellation

Registration No.	5,454,932	Registration Date	April 24, 2018
International Registration No.	016710139	International Registration Date	November 09, 2017
Registrant	POLYFUSION SYNTHESIZERS, LLC 2428 N HUMBOLDT BLVD MILWAUKEE, WISCONSIN 53212		

Goods/Services Subject to Cancellation

Class 015. First Use: 2018/01/22 First Use in Commerce: 2018/01/22 All goods and services in the class are cancelled, namely: MUSIC SYNTHESIZERS

Grounds For Cancellation

Hornby v. TJX Companies Inc.	87 USPQ2d 1411 (TTAB 2008) [precedential]
False Suggestion Of A Connection	Trademark Act section 2(a)

Carter-Wallace, Inc. v. Procter & Gamble	434 F.2d 794, 804 (9th Cir. 1970)
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Co.	
Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.,	458 F.3d 931, 935 (9th Cir. 2006)
Abandonment Defense	Trademark Act section 63

Lyon v Quality Courts United, Inc.	249 F.2d 790, 795 (6 th Cir 1957)
Consumers Union of the United States v New Regina Corp	664 F. Supp. 753 n.12 (S.D.N.Y.1997)
False Designations Of Origin; False Description Or Representation	Trademark Act section 43(a)

Nike, Inc. V Peter Maher and Patricia Hoyt Maher	Opp. No. 91188789, 2011 WL 3828723
Dilution By Blurring	Trademark Act section 43(c)

Fendi Adele S.R.L. v. Filene's Basement, Inc.	2010 WL 907869 (S.D.N.Y. Mar. 11, 2010)
New York City Triathlon, LLC v. NYC Triathlon Club, Inc.	704 F. Supp. 2d 305 (S.D.N.Y. 2010)
Tiffany & Co. v. Boston Club, Inc.,	231 F. Supp. 836, 844 (D. Mass. 1964)
Dilution By Tarnishment	Trademark Act section 43(c)

TIFFANY AND COMPANY and Tiffany NJ (LLC), Plaintiffs, v. COSTCO WHOLESALE CORPORATION, Defendant.	No. 13 Civ. 104(LTS)(DCF)
Willful Trademark Infringement	Trademark Act section 35(a)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	NONE	Application Date	06/17/2017
Registration Date	NONE		
First Use	19770307	First Use In	19770307

		Commerce	
Word Mark	POLYFUSION		
Design Mark	<i>polyfusion</i>		
Description of Mark	The mark consists of the word Polyfusion in fancy lettering		
Goods Services	009 Electronic effects units for musical instruments 015 Electronic musical keyboards; Music synthesizers		

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1,117,225	Application Date	03/07/1975
Registration Date	05/01/1979		
First Use	19750400	First Use In Commerce	19750400
Word Mark	POLYFUSION		
Design Mark	Typed Drawing		
Description of Mark	The mark consists of the word Polyfusion in fancy lettering		
Goods Services	015 ELECTRONIC MUSIC SYNTHESIZER AND PARTS THEREOF		

Attachments	<p>Petition to cancel.pdf</p> <p>755MarkII.POS.01.2017.pdf (2 pages)(699 KB)</p> <p>2018-01-23 Letter-1.pdf (2 pages)(161KB)</p> <p>Fake Poly Using Steve P W_Out Permission.pdf (1 page)(1 MB)</p> <p>Fake Polyfusion Advertising Back.pdf (1 page)(4.5 MB)</p> <p>Fake Polyfusion Advertising Front.pdf (1 page)(4.3 MB)</p> <p>Fake Polyfusion False Advertising II.pdf (1 page)(806 KB)</p> <p>Fake Polyfusion False Advertising.pdf (1 page)(257 KB)</p> <p>Fake Polyfusion Reporting Me 2.pdf (1 page)(143KB)</p> <p>Fake Polyfusion Reporting Me 3.pdf (1 page)(337KB)</p> <p>Fake Polyfusion Reporting Me.pdf (1 page)(43KB)</p> <p>Fake Polyfusion Tshirt.pdf (1page)(436 KB)</p> <p>Fake Polyfusion Website.pdf (1 page)(307 KB)</p> <p>Knobcon Swag Intent_.pdf (1 page)(69 KB)</p> <p>Logan Erickson Mike Olson.pdf (1 page)(1.9 MB)</p> <p>Ordinary Business Example.pdf (1 page)(181 KB)</p> <p>Porcaro Advertising Back.pdf (1 page)(1.3 MB)</p> <p>Porcaro Advertising Front.pdf (1 page) (4.3 MB)</p> <p>Danny Erickson Polyfusion LLC.pdf (1 page)(546 KB)</p> <p>Radke And Erickson Prior Knowledge Of Polyfusion.pdf (1 page)(2.5 MB)</p>
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	Steve Porcaro Still Wearing Our New Polyfusion Tee.pdf (1 page)(3 MB) Steve Porcaro's Polyfusion.pdf (1 page)(3.9 MB) Steve Porcaro's Polyfusion 2.pdf (1 page)(3 MB) Cancellation.pdf (16 pages)(197 KB)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by email on this date.

Signature	/Ronald J. Folkman/
Name	Ronald J. Folkman
Date	06/20/2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK AND APPEAL BOARD

In re Registration of:

Registrant	:	Polyfusion Synthesizers, LLC
Reg. No.	:	5,454,932
Mark	:	Polyfusion in fanciful characters
Registration Date	:	April 24, 2018

Polyfusion Electronics, Inc.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. _____
	:	
Polyfusion Synthesizers, LLC,	:	
	:	
Registrant	:	

PETITION FOR CANCELATION

Polyfusion Electronics, Inc. (“Petitioner”), a New York corporation having its principal place of business at 30 Ward Rd, Lancaster, New York 14806, believes that it is being and/or will be damaged by the continued registration in the United States Patent and Trademark Office (“USPTO”) of mark No. 5,454,932 for the mark POLYFUSION in fanciful characters (the “POLYFUSION” Registration”) and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064 and in accordance with 37 C.F.R. §2.111(b), as grounds for cancellation.

Petitioner is a leading Contract Electronics Manufacturer (“CEM”), famous electronics designer and maker of synthesizers that has never ceased business operations since its inception in 1975. Along with the design and manufacturing of various audio

and electronic equipment in a wide variety of fields, Petitioner also continues to service its famous synthesizers it has designed and sold until approximately 1983 and continues to sell accessories bearing the mark in question under the contested Trademark.

Petitioner's first use in commerce was in 1975 and has never ceased use of name or trademark. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner's continued use of the "Polyfusion" mark on legacy synthesizers as well as new synthesizers, synthesizer accessories, effects pedals and units, audio devices, marketing materials, metadata, advertisements, keywords, websites, and clothing. The Registration, thus, is causing injury and damage to Petitioner and Petitioner has standing to challenge it. Attached as **Fake Polyfusion Reporting Me**, **Fake Polyfusion Reporting Me 2**, and **Fake Polyfusion Reporting Me 3**, are screen shots of Registrant reporting Petitioner's social media sites to the respective companies. Petitioner is being wiped from history because it cannot promote its business, talk about its history, and warn the public to save them from any confusion all because Petitioner cannot use its own name and mark.

Upon information and belief, Polyfusion Synthesizers, LLC is an American limited liability company with its principal place of business at 2428 N Humboldt Blvd, Milwaukee, Wisconsin 53212 ("the Registrant")

On April 19, 2017, Registrant filed an application to register the mark, "POLYFUSION" in fanciful characters under SECTION 1(b) of the Lanham Act, 15 U.S.C. § 1051(a). Based on this application, Registrant obtained U.S. Registration No. 5,454,932 (the "Registration"), which issued on April 24, 2018 for the term

POLYFUSION in fanciful characters used on “Music synthesizers” International Class
15.

FIRST BASIS FOR CANCELLATION – False Sense Of A Connection

1. The TTAB is empowered to order cancellation of registered marks that falsely suggest a connection with “persons, . . . institutions, or national symbols” pursuant to 15 U.S.C. § 1052(a), 1064.

2. The mark in the Subject Registration is the same as the name used by the Petitioner. The mark in Subject Registration points uniquely and unmistakably to the Petitioner.

3. The Petitioner is not connected with any activities performed by the Registrant in connection with the mark in the Subject Registration

4. The fame or reputation of the Petitioner is such that, when the mark in the Subject Registration is used with the Registrant’s goods or services, a connection with the Petitioner is presumed.

5. Attached as **Fake Polyfusion Website, Fake Polyfusion Tshirt, Fake Polyfusion Advertising Back, Fake Polyfusion Advertising Front, Porcaro Advertising Back, Porcaro Advertising Front, Fake Polyfusion False Advertising II, and Fake Polyfusion False Advertising** are examples of Registrant using Petitioner’s likeness and persons associated with Petitioner that create a false Sense of a Connection.

6. Steve Porcaro, a famous keyboard player from the famous band, Toto is still associated with Petitioner. Toto has recorded and is know around the world for, among others, the hit songs “Africa”, “Rosanna”, “99”, and many others.

7. Attached as **Steve Porcaro Still Wearing Our New Polyfusion** Tee is a screenshot of Steve Porcaro wearing Petitioner’s mark during his last music concert tour with his famous band, Toto.

8. Attached as **Steve Porcaro’s Polyfusion** and **Steve Porcaro’s Polyfusion 2** are two pictures of Steve Porcaro’s Polyfusion synthesizer with Polyfusion mark on it that Petitioner is currently performing service work on.

9. Upon information and belief, Keyboard Magazine conducted an interview with Steve Porcaro on or about Jul 8, 2016. Jon Regen wrote the article. The article talks about Steve’s use of his Polyfusion synthesizer on his latest album.

10. Upon information and belief, another interview was conducted with Steve Porcaro on or around 07 April 2017 by KVRaudio.com. The interview has pictures of Steve Porcaro’s famous Polyfusion synthesizer with the Polyfusion name still on it.

11. Petitioner was also recently interviewed for a brand new book called, *Patch & Tweak*. *Patch & Tweak* is a new book being written about modular synths, their makers, and masters. Patching secrets, performance tips, history, modules, and techniques. Upon information and belief the authors did NOT interview Registrant concerning the history, legacy, and story behind POLYFUSION synthesizers, because Registrant is NOT the same as the original designer of the synthesizers. When said book is released there will be confusion due to Petitioner

not being able to have contact with its fans and new customers because of the inability to have any type of marketing material, social media page, and so forth. People will only see the Registrant's website and social media pages and will be confused that it is Petitioner.

12. Accordingly, the Subject Registration should be canceled.

Alternatively, the Subject Registration should be transferred to the Petitioner under Section 18 of the Trademark Act of 1947, 15, U.S.C. § 1068.

SECOND BASIS FOR CANCELLATION – Abandonment Defense

13. Upon information and belief from a letter dated January 23, 2018 and attached as **2018-01-23 Letter-1**, the Registrant claims no evidence of Petitioner's use of the mark or its intent to resume use of the mark for electronic music synthesizers prior to the application Serial No. 87/513,037:

There is no evidence of your client's use of the mark or its intent to resume use of the mark for electronic music synthesizers prior to the 87/513,037 application. Later use of a trademark cannot retroactively cure a prior abandonment. To the extent your client is relying on "goodwill" from use prior to 2000, such residual goodwill is an insufficient defense to trademark abandonment. See Hornby v. TJX, 87 USPQ2d 1421 (2d Cir 1989).

14. Upon information and belief, the Registrant has not shown that there was discontinuance of Petitioner's trademark use, nor Petitioner's intent not to resume any such use, nor that Petitioner had ceased all bona fide uses in the ordinary course of business.

15. Petitioner never abandoned the products, the designs, or the customers and loyal fans.

16. Neither Scott Radke, Logan Erickson, nor Aaron T. Olejniczak ever called Polyfusion Electronics, Inc., or its CEO (Ronald J. Folkman) to find out

anything about Petitioner's status, to request permission to use anything, to request a license agreement, or to make an offer to acquire part or parcel of the product line.

17. Attached as **Ordinary Business Example** is a screenshot of Petitioner operating in the normal course of business offering warranty services under trademark in question. The timestamp on Petitioner's bona fide use is 8 days prior to Registrant's Filing date of April 19, 2017.

18. In the case of Wells Fargo v ABD Insurance and Financial Services (Wells Fargo & Company; Wells Fargo , the 9th Circuit Court of Appeals said,

To prove abandonment of a mark as a defense to a claim of trademark infringement, a defendant must show that there was: "(1) discontinuance of trademark use and (2) intent not to resume such use." Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc., 458 F.3d 931, 935 (9th Cir. 2006). Even a "single instance of use is sufficient against a claim of abandonment of a mark if such use is made in good faith." Carter-Wallace, Inc. v. Procter & Gamble Co., 434 F.2d 794, 804 (9th Cir. 1970). All bona fide uses in the ordinary course of business must cease before a mark is deemed abandoned.

19. Petitioner has been in business for 44 consecutive years. Petitioner has other products in the music industry. Attached as **755MarkII.POS.01.2017** is an examples of an audio product Petitioner has continued to make and sell under the Polyfusion name after lapse of trademark.

20. Petitioner still has Synthesizer accessories such as synthesizer patch cables bearing Petitioner's mark and replacement keybeds that are still sold today and often given to existing clients as well, which still contributes to keeping Petitioner's goodwill in the Industry.

21. Upon information and belief, the attached example, **Ordinary Business Example** clearly shows Petitioner's bona fide use of the mark in question in the ordinary course of business 8 days prior to Registrant's filing.

THIRD BASIS FOR CANCELLATION – False Designation of Origin; False description or representation

22. Upon information and belief, Registrant has used Petitioner's likeness on marketing material, used Petitioner's actual promotional material, and implied an affiliation with a musical artist that is connected to Petitioner implying that Registrant is actually the Petitioner.

23. By using Petitioner's advertising and promotional material, Registrant is misrepresenting the nature, characteristics, qualities, and geographic origin of Registrant's goods.

24. By using Petitioner's likeness and products on advertising materials Registrant is likely to cause confusion, cause to mistake, or deceive as to the affiliation to Petitioner.

25. By using a picture of a musical artist in front of Petitioner's product, Registrant is deceiving as to the affiliation, connection, or association of such person and Petitioner's product to Registrant. Steve Porcaro, the famous musical artist in question is still associated with Petitioner along with Steve Porcaro's famous Polyfusion Synthesizers, Damius, Ramses, Ophelia, and Rootus. The advertisement in question has a famous picture of both Steve Porcaro and Damius on one side of the advertisement.

26. Upon information and belief, when Registrant was challenged by Steve Porcaro for using his likeness without his consent, Registrant replied that,

“Needless to say, some stickers made their way into a handful of “swag bags” and we sincerely apologize for that.” Attached, as **Fake Poly Using Steve P W Out**

Permission, is the email Steve Porcaro sent Petitioner as evidence for this petition.

27. Upon information and belief, Petitioner obtained an email from Knobcon, the world’s only synthesizer convention, detailing “Swag Bag” instructions. The email is attached as **Knobcon Swag Intent**. The email from Knobcon clearly states the instructions necessary to place items in the “Swag Bag”.

28. Upon Information and belief, this shows Registrants intentional actions to place advertisements with Petitioner’s products and brand ambassadors in the “Swag Bag” which Petitioner believes is a false designation of origin and a false description or representation of Registrant’s products. Registrant is using the goodwill, reputation, and fame of Petitioner to confuse the public.

29. Upon information and belief, Registrant is familiar with, and understands Petitioner’s goodwill, reputation, and fame.

30. Attached as **Logan Erickson Mike Olson** and **Radke And Erickson Prior Knowledge Of Polyfusion** are examples illustrating that both Scott Radke, the original applicant, and Daniel Logan Erickson-Cudworth, Registered Agent for Polyfusion Synthesizers, LLC both knew of Petitioner’s goodwill, fame, and reputation in the industry.

31. Attached as **Danny Erickson Polyfusion LLC**, is a screenshot showing Erickson-Cudworth’s association with Registrant.

32. Attached as **Fake Polyfusion False Advertising** and **Fake Polyfusion False Advertising II** are examples of the confusion already caused by

Registrant. By using Petitioner's promotional material and using the language, "Coming soon...Again", Petitioner believes that the Registrant has implied a False Designation of the Origin and made a false representation of their products and as seen from their post, it has already caused confusion to the public.

33. Kenneth Samuel Cromie replied to Registrant's post with, "I just had my hand on one." The only "one" that Mr. Cromie could possibly have his hand on is Petitioner's synthesizer because upon information and belief, Registrant's first use was on 2018/01/22 and this was posted by Registrant on May 9, 2017.

FOURTH BASIS FOR CANCELLATION – Dilution By Blurring; Dilution by Tarnishment

34. Petitioner hereby incorporates by reference and realleges each and every allegation set forth in paragraphs 1 through 29.

35. Petitioner's dates of use of its POLYFUSION Mark are prior to the date of filing of Registrant's Application and the date of the Registrant's claimed date of first use.

36. In view of the identicalness of the respective marks, identical channels of trade and the identical goods offered for sale by the respective parties, Registrant's mark so resembles Petitioner's mark, previously used in the United States, and not abandoned, as to be likely cause of confusion, or to cause mistake, or to deceive as to source by suggesting that Registrant's goods are associated with or approved, endorsed, affiliated, authorized, or sponsored by petitioner.

37. Registrant's use of Petitioner's Mark is likely to cause dilution by blurring because of the association described above.

38. Petitioner is known and has goodwill throughout the music and synthesizer industry for extreme levels of quality, design, engineering, and manufacturing.

39. Upon information and belief, Registrant is working with Daniel Logan Erickson-Cudworth ("Logan Erickson").

40. Upon information and belief, Logan Erickson is the organizer of Polyfusion Synthesizers, LLC.

41. Upon information and belief, Logan Erickson has attempted to, and failed to engineer a discrete version of a popular electronic component named, ua726.

42. Upon information and belief, Logan Erickson is using Petitioner's schematics to reverse engineer and clone Petitioner's designs.

43. Petitioner's reputation for extreme quality will be tarnished if upon Petitioner's information and belief that Logan Erickson has shown his incapability to reverse engineer other electronic components is true. Furthermore Petitioner has many procedures to ensure Petitioner makes the highest quality synthesizers. Petitioner only uses high quality components in its synthesizers. Because of the high quality components used, manufacturing procedures, design elements, Petitioner is famous in the industry for the reputation of its synthesizers. Legendary is one word that has been used to describe Petitioner's synthesizers by its customers.

44. If Registrant has copied Petitioner's design in addition to, what Petitioner believes, creating a false connection with Petitioner, then Petitioner's

reputation will be tarnished if identical components and procedures are not used to manufacture Registrant's synthesizers.

45. If upon information and belief Petitioner has is wrong and Registrant is using its own design behind Petitioner's name, the public will get a synthesizer that will not sound the same as Petitioner's synthesizer and the public will receive a product with the Polyfusion name and logo that is not what they were expecting, which will have an adverse effect on the goodwill and reputation of Petitioner.

WHEREFORE, Petitioner requests that Registration No. 5,454,932 be canceled pursuant to 15 U.S.C. § 1064(3) or Alternatively, Petitioner requests that the Subject Registration should be transferred to the Petitioner under Section 18 of the Trademark Act of 1947, 15, U.S.C. § 1068 because: (1) The Registrants use of the POLYFUSION trademark falsely suggests a connection with Petitioner, (2) the Registrants claim of abandonment is unproven, (3) Upon information and belief Registrant has used Petitioner's advertising material to imply Registrant's products are associated with Petitioner and upon information and belief Registrant has used false and misleading representation of Petitioner's products in Registrants promotion, (4) Registrant is likely to cause dilution by blurring because of the association that arises from the identicalness between Registrant's mark and Petitioner's mark and impairs the distinctiveness of Petitioner's mark. Registrant is likely to cause dilution by tarnishment because Petitioner is known for extreme high quality in design, engineering, and manufacturing and Registrant has no track record of similar levels of design, nor engineering and manufacturing.

Date: June 28, 2018

Respectfully Submitted,

Ron Folkman

s/ Ronald J. Folkman
Ronald J. Folkman

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2018, that a true and accurate copy of the foregoing was served by email upon Registrant at the following email addresses of record:

aarono@andruslaw.com
mariem@andruslaw.com
cathym@andruslaw.com
tmdocketing@andruslaw.com

June 22, 2018

s/ Ronald J. Folkman
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